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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5266-2018 (O&M)

Date of decision : 10.12.2018

Jasbir Singh

... Petitioner

Versus

Makhan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Arora, Advocate
for the petitioner.

Mr. Aseem Kataria, Advocate
for respondent No.27.

AMIT RAWAL, J.

The petitioner is aggrieved of the impugned order dated 07.11.2017, whereby an application for withdrawal of the suit at the initial stage owing to certain inherent infirmities and defect, has been dismissed.

Learned counsel appearing on behalf of the petitioner-plaintiff submitted that the plaintiff was in jail and had filed the suit for grant of declaratory decree in respect of total land measuring 122 kanals 9 marlas on the basis of exchange deed/Ikrarama agreement dated 18.09.2009 with consequential relief of permanent injunction. In fact, the total holding of the plaintiff was 57 kanals 7 marlas, but the plaintiff claimed exclusive ownership of land measuring 122 kanals 9 marals as it was in ownership of the mother-in-law and sister-in law. It would be a complex amendment and therefore, a necessity arose for withdrawal of the suit by adding the

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aforementioned persons in the suit. No harm and prejudice would be caused as the suit is at the initial stage.

Learned counsel for the respondent No.27 submitted that inherent defect has not been pointed out and therefore, the suit cannot be allowed to withdraw at the wish/will of the plaintiff, in fact, mother-in-law and sister-in-law cannot be prevented to espouse their grievance in an independent proceedings, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Arora.

It would be apt to reproduce the provisions of Order 23 Rule 1(3)(a) of the Code of Civil Procedure, which read as under:-

"1. Withdrawal of suit or abandonment of part of claim.—

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim."

The aforementioned provisions enable the parties to seek the withdrawal of the suit if it suffers from formal defect. In case, the petitioner is allowed to cause amendment, it would be a complex amendment and not explanatory. In such circumstances, the provision of law as envisaged by

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the legislature, were attracted. No harm and prejudice would be cause to the defendants, in case the suit is allowed to be withdrawn as the suit is at initial stage.

Keeping in view the aforementioned facts, the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby set aside. The present revision petition stands allowed.

10.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**